

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, D.C. 20554**

In the Matter of	)	
	)	
Acceleration of Broadband Deployment	)	WC Docket No. 11-59
Expanding the Reach and Reducing the Cost	)	
of Broadband Deployment by Improving	)	
Policies Regarding Public Rights of Way and	)	
Wireless Facilities Siting	)	

**REPLY COMMENTS OF THE CITY OF ALBUQUERQUE, NEW MEXICO**

The City of Albuquerque, New Mexico files these reply comments to respond to the Commission’s Notice of Inquiry,<sup>1</sup> and to address a false claim made against Albuquerque by the PCIA-The Wireless Infrastructure Association and The DAS Forum.<sup>2</sup> The City supports comments filed by the National League of Cities, *et al.*<sup>3</sup>

**I. PCIA FALSELY IDENTIFIES ALBUQUERQUE AS A CITY THAT REQUIRES A FULL ZONING REVIEW AND HEARING FOR EACH NEW COLLOCATION ON A TOWER.**

PCIA identifies Albuquerque as one of the communities where “[r]egardless of the status of the existing tower, collocation applications in certain jurisdictions must go through a full

---

<sup>1</sup> Notice of Inquiry, WC Docket No. 11-59, FCC 11-51 (Apr. 17, 2011) (“NOI”).

<sup>2</sup> Comments of PCIA-The Wireless Infrastructure Association, WC Docket No. 11-59 (July 18, 2011).

<sup>3</sup> Comments of the National League of Cities *et al.*, WC Docket No. 11-59 (July 18, 2011).

zoning review and hearing. One must obtain a variance or special use permit for each new collocation on a tower.”<sup>4</sup> But this is just not the case, a point that would have been obvious had PCIA reviewed the Albuquerque wireless siting ordinance, or contacted the City to verify its claim.

The ordinance appears in the Albuquerque City Code, which is available online.<sup>5</sup> It provides that in almost all zones “[a] wireless telecommunications facility, the antennas of which are all mounted on an existing vertical structure” is a permissive use.<sup>6</sup> As a result, PCIA’s claim that “[o]ne must obtain a variance or special use permit for each new collocation on a tower” is wrong. In addition, the City’s ordinance strongly encourages collocations. It provides that “[n]o new free-standing wireless telecommunications facility shall be permitted unless the Planning Director or his/her designee determines, upon the applicant's demonstration, that no existing tower, structure or public utility structure can be used in lieu of new construction to accommodate the applicant's proposed telecommunications facility.”<sup>7</sup> It further provides that, though all new towers and collocations must be concealed, collocations on existing, non-concealed structures (such as power poles, arrays and lattice towers) need not be.

---

<sup>4</sup> PCIA Initial Comments, Exhibit B, at 8.

<sup>5</sup> See [http://www.amlegal.com/albuquerque\\_nm/](http://www.amlegal.com/albuquerque_nm/). The code specifically addresses wireless telecommunications facilities at Section 14-16-3-17, and it addresses broader zoning requirements in Chapter 14, Article 16.

<sup>6</sup> See, e.g., Albuquerque Code §§ 14-16-2-15(A)(18)(e); § 14-16-2-16(A)(15)(e); § 14-16-2-17(A)(17)(e); § 14-16-2-19(30)(e). The facility must comply with the requirements of 14-16-3-17.

<sup>7</sup> Albuquerque Code § 14-16-3-17(A)(6).

Preserving sight lines is critical to the City's culture and economy. Albuquerque is a high desert city nestled against the Sandia Mountains to the east and the Petroglyph National Monument and the Escarpment to the west. As one of the oldest cities in the United States, Albuquerque has provided a home for people in the Rio Grande Valley for many centuries and is rich with history and culture. Albuquerque's Old Town encompasses about ten blocks of historic adobe buildings, including the San Felipe de Neri Church, the oldest building in the city, which was built in 1793. Old Town today looks much like it did in the late 1700s. Albuquerque enjoys blue skies and sun that shines 310 days a year, which is perfect for outdoor activities and accounts for the city's large tourism industry. The economy depends in part on maintaining the scenic beauty of the surrounding area.

Under the Code, there are two classes of towers. For non-concealed lattice towers and free-standing arrays, a provider can pull a permit and install a collocated antenna without going through any discretionary review. Such applications are submitted directly to Zoning staff and proceed quickly to issuance of a building permit. The City, however, requires that all new towers use concealed (or stealth) technology. Therefore, the City requires applicants for both new towers, which must be concealed, *and for collocations on existing concealed structures*, to demonstrate that the tower or collocation will be consistent with siting and design principles spelled out in the City Code. In certain, established areas (including historical overlay districts and designated view corridors), review of new wireless facilities is justifiably more rigorous than for a non-concealed collocation on an existing non-concealed facility.

In no case does the City require (as PCIA suggests) "full zoning review and hearing." The review and approval process is solely an administrative process: an application is reviewed

by an administrative official to determine whether a proposed wireless facility complies with ordinance requirements; a hearing is only required *if* the decision of the administrator is appealed. As the Code sets out, the administrator reviews an application to determine if the proposed facility will be concealed in its setting by complying with the following criteria:

1. Be aesthetically integrated with existing buildings, structures, and landscaping, to blend in with the nature and character of the built and natural environment and take into consideration height, color, style, massing, placement, design, and shape.
2. Be located to avoid a dominant silhouette of a wireless telecommunications facility on escarpments and mesas, and to preserve view corridors.
3. Be located on existing vertical infrastructure, such as utility poles and public utility structures, including transmission and sub-transmission line structures, if possible.
4. Be located in areas where the existing topography, vegetation, buildings, or other structures provide the greatest amount of screening.
5. Not be a readily visible wireless telecommunications facility.<sup>8</sup>

In addition, new towers are subject to the Code's landscaping and screening requirements.<sup>9</sup> This review is obviously required and appropriate for both new towers and collocated facilities, except for non-concealed collocations on existing, non-concealed structures. It does little good to disguise a facility as a tree, for example, if the collocated facilities are not also disguised and consistent with the design of the tree.<sup>10</sup> Nor would it be particularly fair to

---

<sup>8</sup> Albuquerque City Code § 14-16-3-17(A)(15)(c)(1-5).

<sup>9</sup> Albuquerque City Code § 14-16-3-17(A)(15)(c)(6).

<sup>10</sup> See Albuquerque City Code § 14-16-3-17(A)(12) ("Placing additional antennas on existing non concealed wireless telecommunication towers and existing concealed wireless

require the first attacher to build to a concealed standard, and then allow subsequent attachers to ignore it. Thus, the PCIA is simply ignoring the complexities associated with collocation when it states:

When a tower is initially permitted, it passes the jurisdiction's health, safety and welfare review with regards to its placement and its use for the provision of wireless services. The collocation of additional antennas that do not substantially change the size of the tower should not trigger a full zoning review because: public health issues (i.e., RF emissions) are by statute exclusively within the purview of the FCC; safety issues are addressed through the submission of an engineering report stamped by a licensed engineer at the building permit stage; and welfare issues (typically aesthetics, property value, etc.) are not an issue because the tower itself is essentially unchanged.<sup>11</sup>

The comment grossly understates the potential impact of collocation, particularly where concealed antenna are concerned.

While the City takes steps to ensure that wireless facilities do not disrupt the community's economic, cultural, and historical resources, it encourages broadband deployment in general and collocation in particular. The City approves the vast majority of applications it receives, and its approval process generally operates very smoothly. When it does not, it is typically because the applicant does not bother to review or understand the City Code, or simply ignores it. Thus, for example, some applicants fail to meet even the basic submittal requirements thereby causing delays in the process. Often applicants do not provide information such as color, design and setting of a proposed facility. These items are necessary to determine whether said facility complies with concealment standards and other applicable ordinance requirements. For

---

telecommunication facilities shall be allowed and encouraged. *Such collocation shall be done in the least visibly intrusive manner, to blend in with the existing structure and its surroundings.*") (emphasis added).

<sup>11</sup> PCIA Initial Comments at 19.

instance, the City denied an application for a tower in 2007 because it would have been located in a designated Conservation Area of the Escarpment.

## CONCLUSION

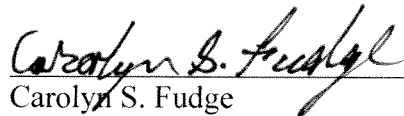
PCIA's allegations about Albuquerque are simply false. For some collocations, approval can be obtained by simply filing out a request at the Zoning intake counter. For other facilities, an *administrative* review is required and necessary to ensure that the proposed facility complies with the City Code. A hearing is not required in either case, contrary to the claims of PCIA . Providers are able to deploy in Albuquerque and the City is encouraging, not discouraging, deployment.

It is hard to imagine that the FCC (even if it had the authority to do so) could develop a national rule that could both permit deployment and protect against damage to other critical interests. Albuquerque therefore strongly urges the FCC to refrain from regulating local right-of-way management and facility placement processes. These are highly fact-specific matters, which turn on local engineering practices, local environmental and historical conditions, local traffic and economic development patterns, and other significant community concerns and circumstances. These matters are and should remain managed by local staffs. Imposing a federal regulatory regime would create unnecessary costs for our community, and it would have the

potential to undermine important local, state and national policies that the FCC is not in a position to address effectively.

Respectfully submitted:

CITY OF ALBUQUERQUE  
Robert D. Kidd  
Interim City Attorney

  
\_\_\_\_\_  
Carolyn S. Fudge  
Assistant City Attorney  
P. O. Box 2248  
Albuquerque, New Mexico 87103  
(505) 768-4500

September ~~27~~, 2011